

C.M.D., Punjab National Bank and Others

Vs

Rajendra Nath Chawla

Civil Appeal No. 2545 of 1996

(K. Ramaswamy, B. L. Hansaria, S. B. Majmudar JJ)

31.01.1996

JUDGEMENT

K. RAMASWAMY, J.:-

1. Leave granted.

2. This appeal by special leave arises from the order of the Delhi High Court dated March 31, 1995 in Writ Petition No. 5199 of 1993. On September 29, 1989, the appellant had issued a Circular letter No. 43/89 stating that in accordance with the instructions of the Government, the Bank had decided to permit the officer, who were otherwise eligible for consideration for promotion but could not complete the rural branch experience for no fault of theirs, to be considered for promotion to Middle Management Grade Scale II (for short, 'M.M.G. Scale-II') subject to the following conditions:

"(a) The promoted officers would be straightway posted to rural branches for requisite number of years and under no circumstances would be allowed to shift to other areas before completion of their tenure of rural posting. The concerned officers have already furnished the written undertaking to this effect at the time of the interview.

(b) The officers, who refuse posting in rural branches, as mentioned in (a) above, shall be debarred for consideration for promotion for a period of two years from the date they become eligible, after fulfilling the promotion criteria, including necessary rural branch service.

(c) In case of any reason, the promotee officer has to leave the rural branch prior to completion of the tenure, he shall be reverted to Junior Management Grade Scale-I".

3. On January 9, 1990, the respondent was informed of the approval for his promotion to M.M.G. Scale-II and that he was allocated Punjab Zone subject to the conditions mentioned hereinbefore. He was also informed that in case he would refuse posting in rural branch, he shall be debarred for consideration for promotion for a period of 2 years from the date he becomes eligible after fulfilling the promotion criteria including necessary rural branch experience. The respondent, by his letter dated January 13, 1990, did not accept rural branch posting in Punjab Zone upon promotion. By letter dated January 13-15, 1990, the respondent was informed of the bar in terms of the promotion policy and guidelines and that since he had refused to accept the promotion vide his letter dated

January 13, 1990 for promotion to M.M.G. Scale-II in terms of the promotion policy, he was debarred for consideration for promotion for a period of 2 years from the date he becomes eligible after fulfilling the promotion criteria including necessary rural branch experience.

4. On March 21, 1990, new promotion policy was circulated by the appellant in terms of the Government guidelines which provided, inter alia, that for an officer in Junior Management Grade Scale I (for short J.M.G. Scale-I) to become eligible for consideration for promotion to M.M.G. Scale-II, he should have 7 years of satisfactory service including minimum of two years' service as an officer in rural branch. The Delhi Zonal Office by its circular dated September 16, 1991, invited application for rural posting in nearby region. The respondent had applied on October 15, 1991 for rural branch posting in Meerut region, Karnal region and Rohtak region. The head office of the appellant by its letter dated February 5, 1992 informed its Delhi Zonal Office that the request of the respondent for his posting in rural branch in Meerut has been acceded to and that on his appointment by promotion, he may immediately be relieved. After he had joined, by letter dated March 3, 1992 the respondent requested for cancellation of his posting for rural branch in Meerut region. Accordingly, the Delhi Zonal Office by letter dated May 4, 1992 informed him of cancellation of the posting in rural branch in Meerut region at his request. He was further informed that he was bound by the consequences of his refusal to the posting in terms of rules to guidelines enforced by the Government from time to time.

5. On October 15, 1992, Delhi Zonal Office in its circular No. 40 of 1992 invited application for posting in rural branches in Delhi. The respondent did not offer himself for posting in any rural branch to complete the requisite two years' rural posting which is a pre-condition for eligibility to be considered for promotion to M.M.G. Scale-II. When applications were invited for promotion to M.M.G. Scale-II posts through circular dated March 30, 1993 to fill up the vacancies as per the eligibility criteria laid down in circular No.1271 dated March 21, 1991, the respondent had applied for consideration of his claims and inadvertently he was permitted to appear in the written examination and interview. Pursuant to his application in July, 1993, he was informed that he was not eligible to be considered for promotion in terms of the letter of debar issued to him. Consequently, the result of written examination and interview of the respondent were withheld. He was also informed by letter dated November 4, 1993 that he was debarred for promotion for a period of two years from the date he became ineligible for promotion until he fulfilled the promotion criteria including necessary rural branch experience which he did not fulfill for selection. Aggrieved thereby, he filed the above writ petition. The High Court has allowed the writ petition and quashed the aforesaid letter and directed the appellant to declare the result of the examination of the petitioner and that he was found qualified, to give promotion in either of the channels A and B, since the appellant was bound by terms of the promotion given as per 1991 policy read with circular of 1993.

6. At this stage, it may be relevant to mention that promotion policy for officers has been framed by the Board of Directors of the appellant exercising its statutory power under Regulation 17 of Punjab National Bank Officers (Service) Regulations (for short, 'the Regulation') and Section 19 read with Section 12(2) of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (for short, 'the Act') in consultation with Reserve Bank of India and with previous sanction of the Central Government. According to the said policy, an officer for promotion from J.M.G. Scale I to M.M.G. Scale-II, should have 7 years of satisfactory service and experience inclusive of 2 years' rural branch experience as a pre-condition to be eligible for consideration for promotion. The Board of Directors of the Bank (for short, 'the Board') pursuant to Government guidelines decided to relax the pre-condition of rural posting by making it post-condition, since the Bank was not able to

provide rural posting to all officers due to which a large number of officers could not fulfil the condition of rural posting for two years, although they had completed 7 years' service. On December 2, 1987, the Board in its promotion policy in terms of Government guidelines clarified that the policy would be effective from 1988 selection onwards. It was also clarified that the condition of rural posting experience stipulating rural branch experience was to be operative from June 1, 1988 which was accordingly circulated to all the officers on February 22, 1988 which read thus :

"ELIGIBILITY

Officers promoted as Officer-In-charge/Asstt. Manager before 20-8-80 shall rank for seniority higher than the Accountants and Technical/Special Officers in JMG Scale-I in terms of Regulation 18 (5).

Officer-In-Charge/Asstt. Manager and other officers in Scale I with a minimum of 7 years of satisfactory service as officer shall be eligible provided that have put in two years of service in a rural branch".

7. In the circular No. 1164 dated August 3, 1989, the officers were informed that written test was to be held on September 17, 1989 with the stipulation that last date for receipt of application was 25th August, 1989. The eligibility criteria for selection was stipulated as under:

"Officer-In-Charge/Asstt. Managers and other officers in JMG Scale I with a minimum of 7 years of satisfactory service as on 31st August, 1989 will be eligible for appearing in the written test.

In terms of Government guidelines, officers in JMG Scale I will be eligible for promotion to Scale II provided they have put in 2 years of service in Rural Branch. However, the Officer who are otherwise eligible for promotion in terms of eligibility criteria but could not complete the requisite rural/semi-urban experience for no fault of theirs, may be considered for promotion subject to the stipulation that such officers if approved would be immediately posted in rural/semi-urban branches for requisite number of years and under no circumstances they will be allowed by the Bank to shift to other areas before they complete the tenure of rural semi-urban posting. The individual officer shall furnish an undertaking to this effect while applying for the written test. Please note that case letter/roll No. will not be allotted unless the candidate furnishes unconditional undertaking as per Proforma enclosed with the application form to be submitted for appearing in the written test".

8. The promotion also, therefore, became operative even from June 1, 1988.

9. On March 21, 1989, in terms of the guidelines of the Government of India, the Board approved the eligibility criteria regarding rural/semi-urban branch experience in the promotion policy thus :

"The officers who are otherwise eligible for promotion in terms of eligibility criteria but could not complete the requisite rural/semi urban experience for no fault of theirs, may be considered for promotion subject to the stipulation that such officers, if approved, would be immediately posted in rural/semi-urban branches for requisite number of years and under no circumstances, they will be allowed by the Bank to shift to other areas before they complete the tenure of rural/semi urban posting. The

individual officer shall furnish an undertaking to this effect during selection process.

10. On September 29, 1989 in the circular No.43/89 applicability of the debar clause was considered. The circular reads as under:

"The promotion policy for officers staff contained in Personal Division Circular No. 1081 dated 22nd February, 1988 provides that :-

"An Officer who refuses posting on promotion or seek reversion after accepting the promotion, will be debarred from appearing in the next two successive selections to the next scale. In the case of an Officer who seeks reversion after accepting the promotion, the selection for the purpose of treating him as having been debarred shall be reckoned from the date succeeding the date of reversion".

The Government guidelines in respect of promotion of Officers from JMG Scale-I to MMG Scale-II provide that an Officer in JMG Scale-I having 7 years of satisfactory service shall be eligible for consideration for promotion provided he has put in a minimum of two years service in a rural branch. As regards Specialist Officer, he should take the requisite rural branch experience as and when he switches over to the manistream of banking. In accordance with the instructions of the Government for the above selection, as a very special case, it has been permitted that the Officers who are otherwise eligible for promotion but could not complete the requisite rural branch experience for no fault of theirs may be considered for promotion to MMG Scale-II subject to the following stipulations :-

(a) The promoted Officer would be straight away posted to rural branches for requisite number of years and under no circumstances would be allowed to shift to other areas before completion of their tenure of rural posting. The concerned Officer have already furnished the written undertaking to this effect at the time of the interview.

(b) The Officers, who refuse posting in rural branches, as mentioned in (a) above, shall be debarred for consideration of promotion for a period of 2 years from the date they become eligible, after fulfilling the promotion criteria, including necessary rural branch service.

(c) In case for any reason, the promotee Officer has to leave the rural branch prior to completion of the tenure, he shall be reverted to JMG Scale-I".

11. On August 16, 1989, Government of India, Ministry of Finance had granted formal relaxation to the appellant to the pre-condition of two years' rural branch experience as a post-condition subject to the stipulation as under :

"Govt. is keen that guidelines with regard to rural/semi urban posting are implemented by the banks in right earnestness. As a matter of principle banks could not be given any relaxation unless they satisfy the Govt. that all possible steps have been taken to provide the requisite experience to the eligible officers and there has been no laxity on the part of the management in this regard. However, in view of the circumstances explained by the bank, the Govt. is agreeable, as a very special case and for the last time, to your proposal that officers who have not acquired the requisite rural/semi urban experience but are otherwise eligible may also be

considered for promotion subject to the following stipulation :-

(i) Such promoted officers would be straightway posted to rural/semi urban areas, as the case may be, for requisite number of years and under no circumstances would they be allowed to shift to other areas before completion of their tenure of rural/semi-urban posting.

(ii) Officers who have refused posting in the rural/semi urban areas earlier, as a result of which they could not attain the requisite experience, would not be considered for promotion for a period of two years from the date they otherwise become eligible for promotion.

(iii) Bank would obtain a written undertaking from such officers to the effect that they will undergo rural/semi urban posting on their promotion and no exception will be allowed. In case for any reason the promoted officer has to leave the rural/semi urban areas prior to the completion of the tenure, the bank would revert him to his earlier grade.

(iv) The bank will draw up an action plan for posting officers at all India level in order of seniority to rural/semi urban areas against the available slots. For this purpose necessary changes in the transfer policy of the bank to permit inter-zonal transfers will be effected immediately. The progress made under this action plan will be placed before the Board of Directors on quarterly basis and a copy of the action plan/quarterly reviewed shall be sent to the Banking Division".

12. In Circular No.1271 dated March 21, 1991 dealing with the promotion policy for officers, the eligibility criteria for promotion from JMG Scale-I to MMG Scale-II was reiterated thus : "7 years of satisfactory service in JMG Scale-I, provided the officers had put in a minimum of two years service as an Officer in a rural branch" and in para XIV dealing with "Consequences of absence in interview, non-approval and refusal to accept promotion", it was stated as under :

"(i) If an Officer is ultimately not selected for promotion in any selection, he will be eligible to participate in the next selection. If an Officer is not selected for promotion in two successive selection, he will be eligible for consideration after a gap of one year. Thereafter, there shall be a gap of two years for becoming eligible for consideration.

(ii) An Officer who refuses promotion in higher grade will be eligible for consideration for promotion after a gap of two years.

For the purpose of sub-clause (i) and (ii) mentioned above, the period of one/two years shall be reckoned from the date of approval of the panel by the Competent Authority and the ineligibility on account of debar of one or two years, as the case may be, shall extend further upto 30th September, in case the competent authority has approved the panel in the first half of the financial year or 31st March in case the competent authority has approved the panel in the second half of the financial year.

(iii) An Officer who seeks reversion after accepting the promotion will be eligible for consideration for promotion after a gap of two years. The period of two years in this case will be reckoned from the date of reversion to lower scale".

13. It would thus be clear that though the requirement of fulfilling eligibility criteria, apart from 7 years' satisfactory service as JMG Scale-I to MMG Scale-II and two years of service in rural/semi urban branch, is a pre-condition for promotion, relaxation was given only due to the fact that some of the officers did not have opportunity to complete two years' experience, though they had acquired 7 years' satisfactory qualifying service. Consequently, the policy was adopted to relax pre-condition by making it post-promotional condition. After promotion to MMG Scale-II on completion of 2 years' experience in rural service, the officer becomes fully qualified and his ranking in seniority would be above his immediate Junior in the JMG Scale-I. As a consequence of the change in policy, two systems, i.e. A and B lists were prepared and they were to continue only for the purpose of identifying the officers.

14. The High Court found that due to omission of the words "for no fault of theirs", the relaxation of 2 years' service had been granted and, therefore, from the initial date of the expiry of 2 years from the date of refusal, he had become eligible for consideration; and the denial thereof violated his right under Article 14 and was invalid in law. It is contended by Shri V. R. Reddy, the learned Additional Solicitor General, that the view expressed by the High Court is not correct. Once an officer refuses to accept promotion, the bar of 2 years starts from the date of refusal and he becomes ineligible for consideration. Thus from the date of refusal, for two years he cannot be considered at all for promotion. But thereafter when he is to be considered for promotion he is further required to have fulfilled the additional promotion criteria, namely, two years' experience of rural branch service. Till that happens he would not be entitled to be considered for promotion. The High Court has assumed that after two years of first rejection of promotion he should be considered for promotion even though he might not have completed two years of experience of rural branch service. Though opportunity was given to the respondent and after promotion he had joined, he himself got it cancelled. Therefore, from the date of cancellation, he became ineligible. He was, by inadvertent mistake, permitted to appear in the examination and interview but once he did not complete two years from the date of his refusal as mentioned in the narration of the facts or from the date of cancellation, after joining he did not become eligible until two years' period expired. Shri Madhava Reddy, the learned senior counsel contended that the bar of two years would be applicable on his first declining to accept the promotion. Thereafter, on his appearing for selection and on being found selected, he must get the promotion and if he declined to accept thereafter bar of two years would begin to run from that date. That had happened in the first offer of October 1991 and so in 1993, he became eligible. Though persons similarly situated had been promoted, the respondent was denied of the same and, therefore, the High Court was right in its conclusion that the respondent is entitled to the benefit. We find no force in the contention of Shri Madhava Reddy.

15. It is seen that on his refusal to accept the promotion or on its cancellation, he became ineligible for 2 years for consideration; the reason being that 2 years' rural/semi-urban service was a pre-condition which, though later on made a post-condition, remained to be a mandatory requirement. It was open to an officer, before he appeared in examination and interview not to opt for promotion. On exercise of option he was considered, promoted and was posted to rural service; the officer accepted the promotion and after he joined the M.M.G. Scale-II post, he was required to complete at least two years, if not already completed, or the residue period. If, without completing 2 years, on his own volition, he gets his posting cancelled and reverted to J.M.G. Scale-I and thereafter gets posted in an urban branch, the bar becomes operative and he becomes ineligible for promotion to M.M.G. Scale-II for two years from the date of cancellation. Therefore, the question of putting him in A list or B list does not arise. That would arise only in a case where the officer, for no fault of him, was not given opportunity to serve in rural or semi-urban branch; even though he became qualified after putting in 7 years of satisfactory service, he will then be put in B list and on his

selection and promotion as M.M.G. Scale-II, he will be posted to rural/semi-urban branch. On his completion of 2 years' service or the balance period, he would become fully qualified and secure seniority from the date his immediate junior in List A had joined the post of M.M.G. Scale-II. That facility is inapplicable to an officer who had refused, on his own volition, to accept the promotion and had opted for urban posting. Thus the High Court was wholly wrong in its conclusion that the appellant became qualified in 1993. The view of the High Court that the bar of 2 years is not applicable to him, is clearly incorrect.

16. In the additional affidavit filed, the appellant has stated that no discrimination was shown to the respondent. All the officers are those who had not accepted promotion and had thus remained in urban branches but after promotion they opted for continuance in rural/semi-urban service for the period of 2 years.

17. The appeal is accordingly allowed. The order of the High Court is set aside. Consequently the writ petition stands dismissed. No costs. Appeal allowed.